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12
13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 SECURITIES AND EXCHANGE
16 COMMISSION,

17 Plaintiff,

18 vs.

19 EDWIN YOSHIHIRO FUJINAGA and
20 MRI INTERNATIONAL, INC.,

21 Defendants,

22 and

23 CSA SERVICE CENTER, LLC
24 THE FACTORING COMPANY,
25 JUNE FUJINAGA, and
26 THE YUNJU TRUST,

27 Relief Defendants.
28

Case No.: 2:13-cv-01658-JCM-CWH

**STIPULATION FOR ORDER
AUTHORIZING, APPROVING AND
CONFIRMING SALE OF 2865
COLEMAN WITH OVERBID
PROCEDURES AND ORDER**

21 This Stipulation for Order Authorizing, Approving and Confirming Sale of 2865
22 Coleman with Overbid Procedures (the "Stipulation") is made by and between Robb Evans &
23 Associates LLC as the Receiver ("Receiver") on the one hand, and defendants Edwin Fujinaga
24 ("Fujinaga"), MRI International, Inc. ("MRI"), and their affiliated entities (collectively, the
25 "Defendants", and together with the Receiver, the "Parties") on the other hand, each by and
26 through their counsel.
27
28

1 The Parties hereby stipulate and agree that:

2 **RECITALS**

3 A. On January 27, 2015, the Clerk of Court entered judgment against the Defendants
4 (Dkt. 189) ("Judgment") pursuant to the Court's order granting summary judgment in favor of
5 the Securities and Exchange Commission ("SEC"), plaintiff herein.

6 B. On February 23, 2015, the Court issued its Order Appointing an Equitable
7 Receiver (Dkt. 194) ("Appointment Order") pursuant to which the Receiver was appointed as
8 receiver for various commercial properties and their rents and profits (defined in the appointment
9 order as the "Properties") as more fully set forth in the appointment order.

10 C. On February 25, 2015, the Court issued its Rule 54(b) Certification (Dkt. 195)
11 pursuant to which the judgment was made the final judgment as to the Defendants.

12 D. On May 15, 2015, the Receiver's duties and responsibilities were enlarged by that
13 certain Order Appointing a Full Equitable Receiver to Assume Control over the Defendants'
14 Assets and Enforce the Final Judgment (the "Order Appointing Receiver") entered on May 15,
15 2015 (Dkt. 226). The Order Appointing Receiver supersedes the Appointment Order, and directs
16 the Receiver to take and retain immediate possession, custody, and control of all assets owned or
17 controlled, directly or indirectly, by any of the Defendants in this case, including CSA Service
18 Center, LLC, a Relief Defendant herein. *Id.*

19 E. Pursuant to the Order Appointing Receiver, the Receiver is currently in
20 possession, custody, and control of the real property located at 2865 Coleman Street, North Las
21 Vegas, Nevada 89032 (the "2865 Coleman") and identified by the Clark County Assessor as
22 parcel no. 139-17-610-007.

23 F. 2865 Coleman is a vacant commercial property with approximately 28,366 square
24 foot of leasable space, located on approximately 1.39 acres. Title to 2865 Coleman is held in the
25 name of Relief Defendant CSA Service Center, LLC.

26 G. The Parties agree that it makes economic sense to sell 2865 Coleman, as (a) it is
27 not needed due to the termination of the business formerly conducted at 2865 Coleman; and (b)
28 selling the property will eliminate expenses related to owning and safeguarding 2865 Coleman

1 and the ongoing risk, attendant to some degree to all vacant properties, of theft, break-ins and
2 vandalism.

3 H. 2865 Coleman was subject to liens for accruing real property taxes and other liens
4 including judgment liens. The Receiver has already satisfied most or all real property liens, but
5 to the extent any real property liens remain, these will be satisfied along with property taxes
6 accrued through the date of closing, at the time of closing.

7 I. On June 5, 2015, the Receiver entered into an exclusive right to sell listing
8 agreement and agency disclosure ("Listing Agreement") with Donna Alderson of CBRE, Inc.
9 ("Broker") a true and correct copy of which is attached as **Exhibit 1** hereto. The Broker is
10 experienced in the sale of commercial real estate in Southern Nevada. 2865 Coleman was
11 formally listed for sale with a listing price of \$2,358,800.00.

12 J. The Broker listed 2865 Coleman for sale with the following services:

- 13 i. Property Line - <http://www.propertyline.com> (±800 Members in Las
14 Vegas)
- 15 ii. LoopNet - <http://www.loopnet.com> (±400 Members in Las Vegas)
- 16 iii. Costar - <http://www.costar.com/> (±1,000 Members in Las Vegas)
- 17 iv. Xceligent – <http://cdx.xceligent.com>
- 18 v. CBRE's Website – <https://intranet.cbre.com/en-US>
- 19 vi. In addition, an e-mail blast advertising 2865 Coleman was sent to
20 approximately 2,000 CBRE contacts, and an ad was placed in the Vegas
21 Inc. Magazine.

22 K. In determining the listing price, the Receiver relied on two appraisals of 2865
23 Coleman, and a broker's opinion of value obtained by the Receiver on July 9, 2015, as well as
24 the Receiver's Broker's analysis of and recommendations regarding a listing price for 2865
25 Coleman.

26 L. The Parties previously entered into a Stipulation for Order Authorizing,
27 Approving and Confirming Sale of 2865 Coleman with Overbid Procedures (the "First
28 Stipulation"), which First Stipulation was approved by order of this Court entered on October 16,

1 2015 (Dkt. 278).

2 M. The sale of 2865 Coleman authorized by the First Stipulation did not close,
3 however, as the proposed buyer in that contemplated sale failed to close the transaction and
4 thereby forfeited its earnest money deposit to the Estate.

5 N. Accordingly, the Receiver re-listed the 2865 Coleman property for sale under the
6 pre-existing Listing Agreement referenced hereinabove, and the Broker re-advertised the
7 property with the services listed hereinabove.

8 O. On December 16, 2015, the Receiver received an all cash offer from SGPS
9 Holdings LLC (the "Proposed Buyer") for \$2,411,000.00 without any financing contingency to
10 purchase 2865 Coleman, and the parties reached an agreement for the sale of 2865 Coleman
11 pursuant to the Offer and Acceptance Agreement and Earnest Money Receipt attached as
12 **Exhibit 2** hereto (the "Offer and Acceptance Agreement").

13 P. The Receiver has obtained two independent appraisals of 2865 Coleman as well
14 as a broker's opinion of value, and in the Parties' considered opinions, the sale of 2865 Coleman
15 on the terms in the Offer and Acceptance Agreement is in the best interests of the receivership
16 estate. In light of the proposed overbid session with a published notice, the Receiver has not
17 disclosed the amount of these valuations of the property so as not to interfere with the overbid
18 process;¹ however, the purchase price of \$2,411,000.00 under the Offer and Acceptance
19 Agreement, while lower than the previous stipulated purchase price referenced in the First
20 Stipulation, still exceeds the listing price and the minimum threshold for approval of a private
21 sale, of two-thirds of the average of three appraisals of the property as required under 28 U.S.C. §
22 2001.

23 Q. The Parties seek to sell 2865 Coleman under the Offer and Acceptance
24 Agreement to the Proposed Buyer, who is an unaffiliated, arm's length purchaser based on the
25 Receiver's investigation, subject to the Receiver's conduct of an overbid session after
26 publication of notice to provide an additional opportunity for interested purchasers to bid for the
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28 ¹ The Receiver will submit copies of the valuations with the Court for in camera inspection if requested by the Court.

1 property. The Offer and Acceptance Agreement provides for an "as is," all cash sale with the
2 closing to occur, conditioned upon Court approval of this Stipulation, within 10 days of the
3 conclusion of the overbid session.

4 R. The Parties agree that it is in the best interests of the receivership estate to sell
5 2865 Coleman on an "as is" basis more fully described in the sale contract documents by private
6 sale either (a) to the Proposed Buyer pursuant to the Offer and Acceptance Agreement; or (b) to
7 such higher qualified overbidder who hereafter submits the highest qualified overbid at a
8 subsequent overbid session to be conducted under the terms and conditions more fully set forth
9 herein.

10 S. The Parties hereby request and consent to approval of this Stipulation and
11 confirmation of the sale of 2865 Coleman under the terms and conditions set forth herein as
12 follows:

13 **ORDER**

14 1. The Stipulation, and all relief sought therein, is hereby APPROVED in its
15 entirety;

16 2. The Parties' proposed sale and overbid procedures for the sale of 2865 Coleman
17 are hereby authorized, and the Court hereby approves and confirms the sale of the 2865 Coleman
18 on an "as is" basis more fully described in the sale contract documents by private sale either (a)
19 to the Proposed Buyer, an arm's length buyer, at a purchase price of \$2,411,000.00 pursuant to
20 the Offer and Acceptance Agreement, or (b) to such higher qualified overbidder who hereafter
21 submits the highest qualified overbid at a subsequent overbid session to be conducted under the
22 terms and conditions more fully set forth herein;

23 3. The Receiver is hereby authorized to sell 2865 Coleman in accord with the
24 Listing Agreement and the Offer and Acceptance Agreement which are hereby approved:

25 a. The overbid session shall be conducted within 30 days of the date of entry
26 of the order approving this Stipulation. The overbid session will be conducted at the offices of
27 Robb Evans & Associates LLC, 5560 S. Ft. Apache Road, Suite 120, Las Vegas, Nevada 89148,
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1 b. The Receiver will cause to be published a notice of the proposed sale of
2 2865 Coleman to a qualified bidder at the overbid session to be conducted in accord with this
3 Stipulation, which notice shall state the date, time and place of the overbid session, the
4 requirement for pre-qualification by overbidders and the terms and conditions of the overbidding
5 and sale of the property, as described below ("Overbid Notice"). The Receiver will cause the
6 Overbid Notice to be published in Las Vegas Review Journal one time at least ten days prior to
7 the scheduled overbid session date. The Las Vegas Review Journal is Nevada's largest
8 newspaper, which serves all of Southern Nevada, and publishes daily.^{2,3} The Las Vegas Review
9 Journal's circulation includes North Las Vegas, which is where 2865 Coleman is located,

10 c. Any person wishing to overbid at the overbid session shall be required to
11 pre-qualify with the Receiver no later than 10:00 a.m. two business days preceding the overbid
12 session by delivering to the Receiver's office located at 5560 S. Ft. Apache Road, Suite 120, Las
13 Vegas, Nevada 89148: (a) notice in writing of the prospective overbidder's intent to overbid
14 together with (b) written verification from a financial institution demonstrating to the Receiver's
15 satisfaction, in the Receiver's sole opinion and judgment, the prospective overbidder's ability to
16 complete and close a purchase of 2865 Coleman through sufficient funds or credit facilities
17 within 10 days of the date of the overbid session, and (c) a cashier's check in the sum of
18 \$200,000.00 payable to "Robb Evans & Associates LLC, Receiver of MRI International, Inc. et
19 al.", which cashier's check shall become non-refundable upon acceptance of the overbidder's
20 overbid at the conclusion of the overbid session,

21 d. Overbidders bidding at the overbid session will be deemed to have
22 completed all inspections of 2865 Coleman and will be deemed to have waived and/or removed
23 all contingencies in favor of the buyer under the Offer and Acceptance Agreement, including,

24 _____
25 ² This information was obtained from the Las Vegas Review Journal's website, available at
<http://www.reviewjournal.com/contacts>, last checked January 21, 2016.

26 ³ The foregoing publication provision meets the publication requirements for a private sale under
27 28 U.S.C. section 201(b) discussed hereafter. However, the Receiver also anticipates that the
28 Broker will provide additional notice of the overbid session through e-mail and/or the internet
web sites where the property is listed.

1 without limitation any contingency pertaining to inspection of title, and will be required to
2 complete a cash purchase of 2865 Coleman and close escrow for the purchase of 2865 Coleman
3 within 10 days of the date of the overbid session. The successful overbidder will be required to
4 execute a purchase agreement for 2865 Coleman substantially in the form of the Offer and
5 Acceptance Agreement together with a waiver of all buyer contingencies promptly after
6 conclusion of the overbid session,

7 e. The initial overbid shall be in the amount not less than \$2,652,100.00 (an
8 amount that is \$241,100.00, or 10%, higher than the purchase price under the Offer and
9 Acceptance Agreement), and all subsequent overbids shall be in an amount at least \$25,000.00
10 higher than the preceding bid,

11 f. Pursuant to the Offer and Acceptance Agreement and the Listing
12 Agreement with the Broker, a sales commission in the amount of 5% of the purchase price paid
13 for 2865 Coleman by the Proposed Buyer, or if a higher overbid is received and accepted at the
14 overbid session, by the winning overbidder, shall be paid from the proceeds of sale of 2865
15 Coleman at close of escrow and shall be paid to the Broker as listing agent under the Listing
16 Agreement and a cooperating broker representing the buyer, if any, under the terms of the
17 Listing Agreement;

18 4. The Receiver is authorized to execute all documents and instruments necessary or
19 convenient to complete, implement, effectuate and close the sale of 2865 Coleman, including but
20 not limited to the deed conveying title to 2865 Coleman;

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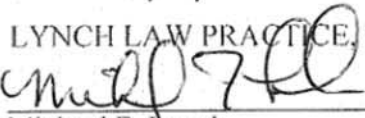
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5. The Receiver is authorized to permit and/or cause to be paid from the proceeds of sale all ordinary and customary closing costs, all costs and expenses required to be paid under the terms of the Offer and Acceptance Agreement by the seller from the proceeds of sale, all commissions provided for in the Offer and Acceptance Agreement, the Listing Agreement, and all real property liens and real property taxes due up to the date of closing; and

6. Notice of this Stipulation is deemed sufficient under Local Civil Rule 66-5 based on the service of this Stipulation on all known non-consumer creditors of the estate concurrent with the filing of this Motion with the Court, but not on the tens of thousands of potential foreign creditors.

Dated: 2/4/2016

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Attorneys for Defendants Edwin Yoshihiro
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Service Center LLC and The Factoring Co.

IT IS SO ORDERED:


The Honorable James C. Mahan
UNITED STATES DISTRICT COURT JUDGE

DATED: February 8, 2016.